

Matthew R. Bainer, Esq. (S.B. #220972)
mbainer@scalaw.com
Molly A. Kuehn, Esq. (S.B. #230763)
mkuehn@scalaw.com
SCOTT COLE & ASSOCIATES, APC
1970 Broadway, Ninth Floor
Oakland, California 94612
Telephone: (510) 891-9800
Facsimile: (510) 891-7030
Web: www.scalaw.com

Attorneys for the Representative Plaintiff
And the Plaintiff Class

Gayle M. Athanacio (S.B. #130068)
gathanacio@sonnenschein.com
Virginia K. Young (S.B. #174384)
vyoung@sonnenschein.com
Megan Barker (S.B. #245991)
mbarker@sonnenschein.com
SONNENSCHN NATH & ROSENTHAL LLP
525 Market Street, 26th Floor
San Francisco, California 94105
Telephone: (415) 882-5000
Facsimile: (415) 882-0300

Attorneys for Defendant
KMART CORPORATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

MICHAEL GILHULY, individually,
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

KMART CORPORATION, and DOES
1 through 100, inclusive,

Defendants

) **Case No. 4:10-cv-0360-PJH**

) **CLASS ACTION**

) **STIPULATION AND [PROPOSED] ORDER**
) **VACATING REFERRAL TO COURT**
) **CONNECTED MEDIATION AND**
) **ASSIGNMENT TO PRIVATE MEDIATION**

) **Date:** May 6, 2010

) **Time:** 2:00 p.m.

) **Dept.:** Courtroom 3, 3rd Floor

) **Judge:** Hon. Phyllis J. Hamilton

1 **WHEREAS** this Stipulation is entered into between Representative Plaintiff Michael Gilhuly
2 (“Plaintiff”) and Defendant KMART Corporation (“Defendant”), by and through their respective
3 counsel of record;

4 **WHEREAS** on May 6, 2010 the Court held an Initial Case Management Conference in this
5 case and informed the parties that the case has been assigned to the Court ADR Program for
6 mediation;

7 **WHEREAS** the parties had previously reached an agreement to seek private mediation;

8 **WHEREAS** the parties respectfully request that the Court enter an order in accordance with
9 this Stipulation to vacate the Court's referral to the Court ADR program and to allow the parties to
10 proceed with private mediation.

11 Accordingly, **IT IS HEREBY STIPULATED AND AGREED** by the parties through their
12 respective counsel of record to VACATE the Court's referral of this case to the Court ADR program
13 and to allow the parties to proceed with a private mediation.

14
15 Dated: May 28, 2010

SCOTT COLE & ASSOCIATES, APC

16
17
18 By: /s/ Matthew R. Bainer
19 Matthew R. Bainer, Esq.
Attorneys for the Representative Plaintiff
and the Plaintiff Class

20
21 Dated: May 28, 2010

SONNENSCHN NATH & ROSENTHAL LLP

22
23 By: /s/ Gayle M. Athanacio
24 Gayle M. Athanacio, Esq.
25 Attorneys for Defendant
KMART CORPORATION

[PROPOSED] ORDER

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: June 7, 2010

By:

HON. PHYLLIS J. HAMILTON
Judge

